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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JACK S. KANNRY and JOYCE F. KANNRY,

Case No. 2:14-cv-01539-GRB
ORAL ARGUMENT REQUESTED

Plaintiffs,

-against-

LIBERTY MUTUAL GROUP, INC., acting by
and through its LIBERTY MUTUAL FIRE
INSURANCE COMPANY,

Defendant.

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**DEFENDANT LIBERTY MUTUAL FIRE INSURANCE COMPANY'S
NOTICE OF MOTION FOR SUMMARY JUDGMENT**

PLEASE TAKE NOTICE that upon the annexed Affirmation of Gail M. Kelly in support of Defendant's Motion for Summary Judgment, dated August 8, 2014, the exhibits annexed thereto, the Defendant's Statement of Undisputed Facts pursuant to Local Rule 56.1, Affidavit of Doreen Decker dated August 5, 2014, the and the accompanying Defendant's Memorandum in Support of Motion for Summary Judgment, Defendant, Liberty Mutual Fire Insurance Company, ("Liberty Mutual"), a Write-Your-Own ("WYO") Program carrier participating in the U.S. Government's National Flood Insurance Program ("NFIP") pursuant to the National Flood Insurance Act of 1968, as amended ("NFIA"- *see* 42 U.S.C. § 4001 *et seq.*),

appearing herein in its “fiduciary”¹ capacity as the “fiscal agent of the United States,”² and at the expense of the United States,³ and pursuant to Fed. R. Civ. P. 56, moves for summary judgment dismissing Plaintiffs’ claims against Liberty Mutual in this matter as there is no material issue of fact to be determined. Plaintiffs’ claims are state-law based extra-contractual claims that arise out of the handling of Plaintiffs’ flood claim by Liberty Mutual and are preempted and barred by federal law. To the extent Plaintiffs seek to bring their claims under federal law, their claims are extra-contractual in nature and must be dismissed as they are not provided for under the NFIP.

Further, Plaintiffs’ failed to provide a pre-suit, signed and sworn proof of loss, thus violating Articles VII(R) and VII(J)(4) of their Standard Flood Insurance Policy (“SFIP”). Pursuant to *Jacobson v. Metropolitan Prop. & Cas. Ins. Co.*, 672 F.3d 171 (2d Cir. 2012), their claims require dismissal as a matter of law. Further still, Plaintiffs have breached the terms of their SFIP by failing to cooperate with the adjuster assigned to investigate their claim. SFIP Article VII(J)(6).

Should this Honorable Court determine that Plaintiffs claims may continue, Defendants submit that Plaintiffs are limited to recover only those items that are afforded coverage pursuant to SFIP Articles III(A)(8) and III(B)(3).

¹ 44 C.F.R. § 62.23(f).

² 42 U.S.C. § 4071(a)(1); *Palmieri v. Allstate Ins. Co.*, 445 F.3d 179, 185 (2d Cir. 2006); *Sanz v. U.S. Security Ins. Co.*, 328 F.3d 1314 (11th Cir. 2003); *Gowland v. Aetna Cas. & Surety Co.*, 143 F.3d 951, 953 (5th Cir. 1998).

³ *Palmieri*, 445 F.3d at 183; *Moffett v. CSC*, 457 F. Supp.2d 571 (D. Md. 2006).

Opposition papers and cross-motion papers, if any, are to be served by August 22, 2014.

Dated: New York, New York
August 8, 2014

Respectfully submitted,

/s/ Sean P. Sullivan

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And

/s/ Gail M. Kelly

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CERTIFICATE OF SERVICE

I hereby certify that on August 8, 2014, I caused a copy of the foregoing DEFENDANT LIBERTY MUTUAL FIRE INSURANCE COMPANY'S NOTICE OF MOTION FOR SUMMARY JUDGMENT, AFFIRMATION IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, STATEMENT OF UNDISPUTED FACTS PURSUANT TO R. 56.1 and DEFENDANT LIBERTY MUTUAL FIRE INSURANCE COMPANY'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT, collectively dated August 8, 2014, and the AFFIDAVIT OF DOREEN DECKER, dated August 5, 2014, to be served upon the following attorneys for the parties in the above-captioned case via regular mail and electronic mail at the addresses shown below, being the addresses designated by said attorneys for that purpose.

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/s/ Gail M. Kelly
Gail M. Kelly